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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Argentina, Colombia, Egypt, El Salvador, Guatemala, Mexico, Paraguay, Peru, Philippines, Senegal and Uruguay: draft resolution

Protection of migrants

The General Assembly,

Recalling its resolution 57/218 of 18 December 2002,

Reaffirming that the Universal Declaration of Human Rights[1] proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Reaffirming also the provisions concerning migrants adopted by the World Conference on Human Rights,[2] the International Conference on Population and Development,[3] the World Summit for Social Development[4] and the Fourth World Conference on Women,[5]

Welcoming the provisions on the human rights of migrants contained in the Durban Declaration and Programme of Action, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance on 8 September 2001,[6] and expressing its satisfaction about the important recommendations made for the development of international and national strategies

[1] Resolution 217 A (III).
[2] See A/CONF.157/24 (Part I), chap. III.
[3] See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.
[4] See *Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995* (United Nations publication, Sales No. E.96.IV.8), chap. I, resolution 1, annexes I and II.
[5] See *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.
[6] See A/CONF.189/12 and Corr.1, chap. I.

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for the protection of migrants and for the design of migration policies that fully respect the human rights of migrants,

Recalling its resolution 40/144 of 13 December 1985, by which it approved the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live,

Recognizing the positive contributions that migrants frequently make, including through their eventual integration into their host society,

Bearing in mind the situation of vulnerability in which migrants and their families frequently find themselves, owing, inter alia, to their absence from their States of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles to the return to their States of origin of migrants who are non-documented or in an irregular situation,

Bearing in mind also the need for a focused and consistent approach towards migrants as a specific vulnerable group, in particular migrant women and children,

Deeply concerned about the manifestations of violence, racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants, especially women and children, in different parts of the world,

Underlining the importance of the creation of conditions that foster greater harmony between migrants and the rest of the society of the States in which they reside, with the aim of eliminating the growing manifestations of racism and xenophobia perpetrated in segments of many societies by individuals or groups against migrants,

Taking note of Advisory Opinion OC-16/99, issued by the Inter-American Court of Human Rights on 1 October 1999, on The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, in the case of foreign nationals detained by the authorities of a receiving State,

Taking note also of Advisory Opinion OC-18/03, issued by the Inter-American Court of Human Rights on 17 September 2003 on the juridical situation and rights of undocumented migrants,

Encouraged by the increasing interest of the international community in the effective and full protection of the human rights of all migrants, and underlining the need to make further efforts to ensure respect for the human rights and fundamental freedoms of all migrants,

Taking note of the decision of the International Labour Organization to have a general discussion on migrant workers, based on an integrated approach, at the International Labour Conference to be held in June 2004 in Geneva,

1. *Welcomes* the renewed commitment made in the United Nations Millennium Declaration[7] to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies;

[7] See resolution 55/2.

2. *Requests* all Member States, in conformity with their respective constitutional systems, effectively to promote and protect the human rights of all migrants, in conformity with the Universal Declaration of Human Rights[1] and the international instruments to which they are party, which may include the International Covenants on Human Rights,[8] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[9] the International Convention on the Elimination of All Forms of Racial Discrimination,[10] the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[11] the Convention on the Elimination of All Forms of Discrimination against Women,[12] the Convention on the Rights of the Child[13] and other applicable international human rights instruments;

3. *Calls upon* States to promote and protect fully the human rights of migrants, as contained in the Durban Declaration and Programme of Action;[6]

4. *Acknowledging with satisfaction* the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[14] and the forthcoming entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;[15]

5. *Strongly condemns* the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, and urges States to apply the existing laws, when xenophobic or intolerant acts or manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;

6. *Strongly condemns also* all forms of racial discrimination and xenophobia with regard to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public, and welcomes the active role played by governmental and non-governmental organizations in combating racism and assisting individual victims of racist acts, including migrant victims;

7. *Requests* all States, in conformity with national legislation and applicable international legal instruments to which they are party, firmly to prosecute violations of labour law with regard to migrant workers' conditions of work, including those related to, inter alia, their remuneration and the conditions of health and safety at work;

[8] Resolution 2200 A (XXI), annex.
[9] Resolution 39/46, annex.
[10] Resolution 2106 A (XX), annex.
[11] Resolution 45/158, annex.
[12] Resolution 34/180, annex.
[13] Resolution 44/25, annex.
[14] Resolution 45/158, annex.
[15] Resolution 55/25, annexes II and III.

8. *Calls upon* all States to consider reviewing and, where necessary, revising immigration policies with a view to eliminating all discriminatory practices against migrants and their families, and to provide specialized training for policy-making, law enforcement, immigration and other concerned government officials, including in cooperation with non-governmental organizations and civil society, thus underlining the importance of effective action to create conditions that foster greater harmony and tolerance within societies;

9. *Reiterates* the need for all States parties to protect fully the universally recognized human rights of migrants, especially women and children, regardless of their legal status, and to treat them humanely, in particular with regard to assistance and protection;

10. *Reaffirms emphatically* the duty of States parties to the Vienna Convention on Consular Relations of 1963[16] to ensure full respect for and observance of the Convention, in particular with regard to the right of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right;

11. *Reaffirms* the responsibility of Governments to safeguard and protect the rights of migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups, and urges them to reinforce measures in this regard;

12. *Urges* all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants, including by individuals or groups;

13. *Encourages* Member States that have not yet done so to enact domestic criminal legislation to combat the international trafficking of migrants, which should take into account, in particular, trafficking that endangers the lives of migrants or includes different forms of servitude or exploitation, such as any form of debt bondage or sexual or labour exploitation, and to strengthen international cooperation to combat such trafficking;

14. *Calls upon* States, when enacting national security legislation measures, to observe national legislation and applicable international legal instruments to which they are party, in order to respect the human rights of migrants;

15. *Encourages* States to consider participating in international and regional dialogues on migration that include countries of origin and destination, as well as countries of transit, and invites them to consider negotiating bilateral and regional agreements on migrant workers in the framework of applicable human rights law and designing and implementing programmes with States of other regions to protect the rights of migrants;

16. *Encourages* all Governments to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of earnings, assets and pensions of migrants to their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

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[16] United Nations, *Treaty Series*, vol. 596, No. 8638.

17. *Welcomes* immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment, and encourages States to consider the possibility of adopting these types of programmes;

18. *Calls upon* all States to protect the human rights of migrant children, in particular unaccompanied migrant children, ensuring that the best interests of the children and the importance of reuniting them with their parents, when possible and appropriate, are the paramount consideration, and encourages the relevant United Nations bodies, within the framework of their respective mandates, to pay special attention to the conditions of migrant children in all States and, where necessary, to put forward recommendations for strengthening their protection;

19. *Requests* States to adopt concrete measures in order to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants and their families respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants and their families — inter alia arbitrary detention, torture and violations of the right to life, including extrajudicial executions — during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

20. *Calls upon* States to facilitate family reunification in an expeditious and effective manner, with due regard to applicable laws, as such reunification has a positive effect on the integration of migrants;

21. *Encourages* States of origin to promote and protect the human rights of those families of migrant workers which remain in the countries of origin, paying particular attention to children and adolescents whose parents have emigrated, and encourages international organizations to consider supporting States in this regard;

22. *Encourages* States, in cooperation with non-governmental organizations, to undertake information campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, so as to enable everyone, in particular women, to make informed decisions, and to prevent them from becoming victims of trafficking and utilizing dangerous means of access that put their lives and physical integrity at risk;

23. *Welcomes* the proclamation of 18 December as International Migrants Day and the invitation to Member States and intergovernmental and non-governmental organizations to observe it through, inter alia, the dissemination of information on the human rights and fundamental freedoms of migrants and on their economic, social and cultural contributions to their host and home countries, the sharing of experience and the design of actions to ensure their protection;

24. *Urges* States to consider ratifying, accepting, approving or acceding to the United Nations Convention against Transnational Organized Crime[17] and its two protocols, the Protocol against the Smuggling of Migrants by Land, Sea and Air and

[17] Resolution 55/25, annex I.

the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[18] and fully to implement those instruments;

25. *Takes note* of the interim report A/58/275 of the Special Rapporteur of the Commission on Human Rights on the human rights of migrants, and requests her to continue taking into account the recommendations contained in the Durban Declaration and Programme of Action in the performance of her mandate, tasks and duties;

26. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all information requested and to react promptly to her urgent appeals;

27. *Requests* the Secretary-General to submit to the General Assembly at its fifty-ninth session a report on the implementation of the present resolution under the sub-item entitled "Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms", and requests the Special Rapporteur to submit to the Assembly at its fifty-ninth session an interim report on the fulfilment of her mandate.

[18] Ibid., annexes II and III.